Supreme Court, U. S.
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IN THE

Supreme Court of the United States

January Term, 1980

NO. 79-1616

GLENN ANGLIN,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA.

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Respondent, the State of Indiana, respectfully prays this Court to deny the issuance of a writ of certiorari directed to the Supreme Court of Indiana, thereby refusing to review the decision entered by the Indiana Court of Appeals in Cause No. 3-378 A 58 on May 17, 1979.

OPINION BELOW

The Indiana Court of Appeals for the Third District entered a memorandum decision in this cause (not for publication) on May 17, 1979. This decision may be found in Petitioner's Appendix A. Rehearing was denied by the Indiana Court of Appeals on August 1, 1979, and transfer

was denied by the Indiana Supreme Court on January 7, 1980.

STATEMENT OF THE CASE

On February 11, 1977, the Petitioner was charged by way of Information, with the charges of No Operator's License, No Registration Plate on Trailer, and Improper Trailer Coupling. The Petitioner was granted a change of judge. On June 1, 1977, the Petitioner waived representation by counsel, moved that the information be stricken (which motion was denied), and pled not guilty to the charges. The Petitioner was tried by jury on July 27, 1977, was found to be guilty as charged and was sentenced to be fined $500 and incarcerated for six (6) months on count I, and fined $250 on each of counts II and III. The Petitioner was also found to be in direct contempt of court, and was sentenced to be incarcerated for ninety (90) days. The Petitioner filed his motion to correct errors on September 23, 1978 which motion was denied on January 11, 1978.

Petitioner appealed his conviction to the Indiana Court of Appeals for the Third District which court, on May 17, 1979 in a memorandum decision marked "Not for Publication", affirmed the conviction.

Thereafter, Petitioner filed his Application for Rehearing with the Indiana Court of Appeals which was denied on August 1, 1979. Thereupon, Petitioner filed a Petition to Transfer to the Indiana Supreme Court, which petition was denied on January 7, 1980.

The instant Petition for Writ of Certiorari followed.

STATEMENT OF THE FACTS

On the afternoon of January 25, 1977, an Indiana State Police Officer observed a motor vehicle being operated by Petitioner near a highway intersection in northeast Indiana.

The officer was acquainted with Petitioner and knew that Petitioner, when stopped on a previous occasion, had no driver's license because it had been suspended. He thereupon ran a radio check and was advised that records showed no current driver's license in the name of Petitioner. Further investigation showed that the previous driver's license held by Petitioner had expired in January of 1976 and that Petitioner obtained a new license, after the stopping, in February of 1977.

At the time of stopping, the officer observed that the trailer which was being pulled by Appellant's truck, had no license and was not properly attached to the truck.

REASONS FOR DISALLOWANCE OF THE WRIT

A. Independent State Ground

Petitioner asserts the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(3). Respondent contends that this Court is without jurisdiction over this cause as the opinion of the Indiana court of Appeals was based upon an adequate independent foundation of state substantive law and not necessarily upon the consideration of a federal question.

While Petitioner contends that a federal question is here involved under *Delaware v. Prouse,* — U.S. —, 99 S. Ct. —, 59 L. Ed. 2d 660 (1979), no federal argument or authority was presented to the trial court or to the Indiana Court of Appeals in the original appeal. It was not until after the memorandum decision was rendered on May 17, 1979, that this new federal issue was presented in an application for rehearing.

The alleged federal issue, thereafter presented to the Indiana Supreme Court in a petition to transfer, had neither been before the trial court or the Court of Appeals. Because the issue was not presented or specifically ruled upon at state level, it is not properly before this Court.

Indiana Rules of Criminal Procedure, Rule 16, and Indiana Rules of Trial Procedure, Rule 59, require that alleged errors first be raised in a motion to correct errors in the trial court. Failure to adhere to these rules results in the waiver of the alleged error for purposes of appellate court review. *Murphy v. State,* 267 Ind. 184, 369 N.E.2d 411, 413 (1977). In addition, Indiana law requires that a party object to alleged errors in a timely and specific manner at trial. *Ballard v. State,* 262 Ind. 482, 318 N.E.2d 798, 807 (1974); *Gutierrez v. State,* — Ind. —, 395 N.E.2d 218, 222 (1979).

Petitioner's failure to adhere to the relevant Indiana procedural requirements regarding the raising of issues for appellate review was, alone, a sufficient ground for the Indiana Court of Appeals to deny Petitioner's claim of error. Therefore, a sufficient state ground exists, independent of any federal question, to sustain Petitioner's conviction. *See, Parker v. North Carolina,* 397 U.S. 790, 798 (1970); *Wainwright v. Sykes,* 433 U.S. 72 (1977). Thus, this petition should be denied.

B. Cases Distinguishable

Even if a federal question were at issue here, the *Prouse* decision is not applicable to the facts in the case.

Prouse involved the random stopping and spot checking of driver's licenses and registration without probable cause to believe that any offense had been or was being committed.

In the instant case, the stopping officer knew Petitioner and knew that his driver's license had been suspended. Since driving with license suspended is a misdemeanor in Indiana, the stopping officer had good, proper and probable cause to believe that an offense was in progress. This

stopping was not spot-checking as was the case in *Prouse,* but was rather a stopping under one of the conditions specifically permitted in *Prouse.*

C. Memorandum Decisions Are Public Record

Appellate Rule 15 adopted by the Indiana Supreme Court relates to opinions of the Indiana Court of Appeals and reads in part as follows:

APPELLATE RULE 15

Opinions, Memorandum Decisions, Powers and Conduct of Court on Appeal; Miscellaneous Provisions

(A) Publication and Precedential Value of Dispositions By Court of Appeals.

(1) The Court of Appeals may dispose of an appeal either by written opinion or by written memorandum decision.

(2) Disposition by written opinion shall be made if such disposition:

(a) Establishes, alters, modifies or clarifies a rule of law, or

(b) Criticizes existing law, or

(c) Involves a legal or factual issue of unique interest or substantial public importance.

Provided, however, dissent from a memorandum decision may be expressed by written opinion. Such dissenting opinion may be designated "For Publication" if the dissenting judge determines that the standard for written opinion is satisfied.

Disposition of appeals shall otherwise be by memorandum decision.

(3) Unless specifically designated "For Publication", memorandum decisions shall not be published nor shall they be regarded as precedent nor cited before any court except for the purpose of establish-

> ing the defense of res judicata, collateral estoppel or the law of the case.

The memorandum decision in the instant case was not unique because such decisions, likewise marked "Not for Publication", constantly flow from the very efficient Indiana Court of Appeals.

Such decisions are not suppressed or unpublished. They are simply not printed and bound in book form. They are a part of the public record and are readily available for examination in the office of the Clerk of the Indiana Supreme Court and Court of Appeals. Other appellate level Courts have adopted similar procedures. See: U.S. Court of Appeals (7th Cir), Rule 35.

The fact that this memorandum decision was not printed and made a part of the bound volumes commonly referred to as Ind. App. or Northeastern Second in no way denied Appellant his right to a fair trial.

The Indiana Code does not require memorandum decisions to be printed and bound in book form, for at I.C. 35-1-47-12, we find the following language:

> "All opinions of the Supreme Court or the Appellate Court (Court of Appeals) in criminal prosecutions must be given in writing and recorded in the order-book."

The instant memorandum decision was so given in writing and so recorded in the order-book. It complied with the statute.

D. Issue Not Presented To State Courts

It is not at all uncommon in Indiana for an Appellant who feels that a memorandum decision in his case should be printed in bound book form to file a motion requesting

the Indiana Court of Appeals to do so. When this is done, the Court either grants the motion or denies it.

Petitioner in this case fails to show the filing of such a motion or any opportunity for a ruling on this question by the Court of Appeals. Further, Petitioner failed to raise this issue in his Petition for Transfer to the Supreme Court of Indiana.

The United States Supreme Court should not pass upon the constitutionality of a state appellate rule which has never been challenged in the state courts. *Buck v. California,* 343 U.S. 99 (1952). Compare: *Adler v. Board of Education,* 342 U.S. 485 (1952); *Beck v. Washington,* 369 U.S. 541, reh. den. 370 U.S. 965 (1961).

CONCLUSION

WHEREFORE, Respondent respectfully submits that the issues alleged by Petitioner have been adequately disposed of pursuant to State law grounds, that the issues alleged by Petitioner do not raise a substantial federal question, and that the errors alleged by Petitioner have not prejudiced the substantial rights of Petitioner. Respondent, therefore, respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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